PETRO LEASCO, INC.

IBLA 78-430 Decided August 31, 1979

Appeal from decision of the Utah State Office, Bureau of Land Management (BLM), rejecting oil and gas offer to lease, U-39601.

Affirmed in part, set aside in part, and remanded for reconsideration.

1. Exchanges of Land: Generally -- Exchanges of Land: Forest Exchanges -- Private Exchanges: Generally -- Private Exchanges: Public Interest

   The Act of Mar. 20, 1922, authorized exchanges for the purpose of consolidating national forest lands, if two criteria were satisfied: (1) the public interest would be benefited thereby; and (2) the proffered lands were chiefly valuable for national forest purposes.

2. Federal Land Policy and Management Act of 1976: Generally -- Federal Land Policy and Management Act of 1976: Exchanges

   The Federal Land Policy and Management Act of 1976 requires, among other things, (1) a determination by the Secretary of Agriculture that the public interest will be well served by a proposed national forest exchange; (2) that evaluation of the public interest shall fully consider the panoply of Federal, State, and local needs enumerated; and (3) that the Secretary shall find that the values and objectives to be served by Federal lands if retained, do not exceed the values of, and public objectives serviceable by, the proffered lands if acquired.

3. Federal Land Policy and Management Act of 1976: Exchanges

The legislative history of the Federal Land Policy and Management Act of 1976 reveals the Congress intent to expand the exchange authority by specifically authorizing exchanges of less than full fee where transfer of such interests in the land is all that is needed to accomplish the objectives involved, thus permitting the solution of longstanding mineral development problems resulting from reservation of minerals to the United States when lands have been disposed of under the public land laws.

4. Federal Land Policy and Management Act of 1976: Exchanges -- Public Lands: Administration -- Regulations: Generally -- Regulations: Applicability

In the case of forest exchanges, lands acquired by the Secretary of Agriculture by exchange or some other form of acquisition upon acceptance of title become part of the National Forest System and are thereby subject to all the laws, rules, and regulations applicable thereto. Forest lands are by statute open to mineral leasing.

5. Federal Land Policy and Management Act of 1976: Exchanges -- Public Lands: Administration -- Regulations: Generally -- Regulations: Applicability

With regard to cases involving reconveyances, restoration orders are mandatory. Under the Federal Land Policy and Management Act of 1976, however, with two exceptions, all Federally owned lands are denominated public lands regardless of the source or manner of acquisition. It is the practice of the Department that public lands administered by BLM are not available for entry, sale, location, or leasing until opened to such appropriation, and until such availability is duly noted on the public land records.

APPEARANCES: David L. Allin, Vice President, Petro Leasco, Inc., pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Petro Leasco, Inc. (hereinafter Petro), appeals the decision of the Utah State Office, BLM, rejecting oil and gas lease offer to lease, U-39061. 1/

On January 26, 1978, appellant filed its oil and gas offer to lease U-39601. By decision of May 2, 1978, the offer was rejected as to W 1/2 SE 1/4 SE 1/4 sec. 1 and S 1/2 SE 1/4 sec. 8 as the oil and gas in these lands was not owned by the United States. The appeal only relates to W 1/2 SE 1/4 SE 1/4 sec. 1 and the N 1/2 N 1/2 S 1/2 SE 1/4 sec. 8, T. 38 S., R. 7 W., Salt Lake meridian.

Petro asserts that the W 1/2 SE 1/4 SE 1/4 sec. 1 and the N 1/2 N 1/2 S 1/2 SE 1/4 sec. 8 are tracts of leasable land held by the United States. On May 23, 1978, BLM advised this Board that the "[r]ejection was in error for the reasons stated. However, a ruling is needed on opening orders under FLPMA" (Federal Land Policy and Management Act of 1976, infra).

The Historical Index for T. 38 S., R. 7 W., shows the following: (1) The SE 1/4 SE 1/4 sec. 1 was transferred to the State of Utah, August 25, 1902, on Selection List No. 6 for the Insane Asylum grant (section 12, Act of July 16, 1894, 28 Stat. 107, 110). Later this subdivision was reconveyed to the United States in two forest exchange cases, the W 1/2 SE 1/4 SE 1/4 by warranty deed dated February 8, 1978, in connection with forest exchange U-32477, and the E 1/2 SE 1/4 SE 1/4 by warranty deed dated July 18, 1975, in connection with forest exchange U-25667. Neither deed reserved any mineral interest to the grantor. The subdivision is within the Dixie National Forest. (2) The S 1/2 S 1/2 SE 1/4 sec. 8 was included in patent 43-65-0209 issued June 2, 1965, under forest exchange U-136727. The S 1/2 N 1/2 S 1/2 SE 1/4 sec. 8 was included in patent 43-76-0019 issued November 6, 1975, under forest exchange U-29273. The N 1/2 N 1/2 S 1/2 SE 1/4 sec. 8 has never been alienated from United States ownership, although it is withdrawn for the Dixie National Forest.

It was correct for BLM to reject the subject application as to W 1/2 SE 1/4 SE 1/4 sec. 1, as this land had not been reconveyed to the United States at the time offer U-39601 was filed, and as to S 1/2 N 1/2 S 1/2 SE 1/4, S 1/2 S 1/2 SE 1/4 sec. 8, as these lands have been patented with no oil and gas reservation to the United States.

1/ Appellant filed a second oil and gas offer to lease, U-39957, on March 29, 1978. That offer was rejected because the lands included therein were segregated pursuant to an unrelated forest exchange application. However, no notice of appeal appears in U-39957. Thus, although the issue of opening orders is identical and arises from a similar factual background, offer U-39957 is not before this Board. 43 CFR 4.410-4.412.

However, to the extent that the BLM decision rejected the offer as to N 1/2 N 1/2 S 1/2 SE 1/4 sec. 8, it is in error and must be set aside.

The authority for forest exchanges is the Act of March 20, 1922, 42 Stat. 465, entitled "An Act to Consolidate National Forest Lands" as added, February 28, 1925, 43 Stat. 1090, 16 U.S.C. § 486 (1976) (hereinafter the Forest Exchange Act). Under the provisions thereof "when the public interest will be benefited thereby," the Secretary of the Interior may, in his discretion, "accept on behalf of the United States title to any lands within the exterior boundaries of the national forests which, in the opinion of the Secretary of Agriculture, are chiefly valuable for national forest purposes."

The Federal Land Policy and Management Act of 1976 (hereinafter FLPMA or the Act), 90 Stat. 2743, 43 U.S.C. §§ 1700-1782 (1976), did not repeal the Forest Exchange Act. FLPMA, sections 701(f), 703, 704; see also FLPMA, section 205, 43 U.S.C. § 1715 (1976). However, FLPMA does contain an exchange provision which is amendatory. As a prelude to our consideration of the FLPMA amendment, we deem it advisable to discuss generally the policy and objectives of that Act.

The Congress primary purposes in enacting FLPMA may be summarized as follows: (1) to establish a mission for public lands administered through BLM; (2) to create sufficient authority by which BLM can implement the goals and objectives established; (3) to enact into law criteria, guidelines, and standards to be followed by BLM in its administration of the various resources under its jurisdiction; (4) to establish procedures for Congressional oversight of public land operations; (5) to modernize public land laws. 1976 U.S. Code Cong. & Adm. News 6176 (94th Cong., 2d Sess.).

The underlying mission of FLPMA is to achieve, by comprehensive land use planning and management coordinated with State and local planning, the multiple use of the various national resources in the public lands on a sustained yield basis. "Multiple use" means management of public lands and their resource values in combinations of balanced uses after consideration of long-term needs for renewable and nonrenewable resources. "Sustained yield" is defined as perpetual maintenance of regular periodic output of various renewable resources consistent with multiple use. "Principal or major uses" are identified as one or more of the following: domestic livestock, grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production. Id. at 6178-79; FLPMA, section 103, 43 U.S.C. § 1702 (1976).

We turn now to the manner in which FLPMA amends the Forest Exchange Act. The primary provision is section 206, 43 U.S.C. § 1716 (1976), subpart (a) of which states the following:

> Sec. 206. (a) A tract of public land or interests therein may be disposed of by exchange by the Secretary

> under this Act and a tract of land or interests therein within the National Forest System may be disposed of by exchange by the Secretary of Agriculture under applicable law where the Secretary concerned determines that the public interest will be well served by making that exchange: Provided, That when considering public interest the Secretary concerned shall give full consideration to better Federal land management and the needs of State and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals, and fish and wildlife and the Secretary concerned finds that the values and the objectives which Federal lands or interests to be conveyed may serve if retained in Federal ownership are not more than the values of the non-Federal lands or interests and the public objectives they could serve if acquired. [Emphasis supplied.]

[1] The Forest Exchange Act authorized exchanges for the purpose of consolidating national forest lands, if two criteria were satisfied: (1) the public interest would be benefited thereby; and (2) the proffered lands were chiefly valuable for national forest purposes.

[2] In sharp contrast, FLPMA requires a determination by the Secretary that the public interest will be well served by the proposed exchange; that determination of the public interest shall fully consider the panoply of Federal, State, and local needs enumerated; and that the Secretary shall find that the values and objectives to be served by Federal lands if retained, do not exceed the values and public objectives serviceable by the proffered lands if acquired.

Mineral exploration and development, and national forest activities are designated principal or major uses to be utilized comprehensively under the principles of multiple use and sustained yield. Section 206(a) preserves the fundamental and older authority for forest exchanges, but supplants the permissive and parochial criteria thereof, consistent with the mission and policy of FLPMA.

[3] In addition, the legislative history of FLPMA reveals the intent of Congress to expand the exchange authority by specifically authorizing exchanges of less than full fee "where transfer [of such interests] in the land is all that is needed to accomplish the objectives involved * * *. This provision [permits] the solution of long-standing mineral development problems resulting from reservation of minerals to the United States when lands have been disposed of under the public land laws." 1976 U.S. Code Cong. & Adm. News 6184 (94th Cong., 2d Sess.).

Our view that section 206 of FLPMA augments and complements the Forest Exchange Act is buttressed by the additional authority conferred by section 205 of FLPMA, relating to acquisitions, 43 U.S.C. § 1715 (1976), which provides in material part:

> Sec. 205. (a) Notwithstanding any other provisions of law, the Secretary, with respect to the public lands and the Secretary of Agriculture, with respect to the acquisition of access over non-Federal lands to units of the National Forest System, are authorized to acquire pursuant to this Act by purchase, exchange, donation, or eminent domain, lands or interests therein: * * *.
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> (b) Acquisitions pursuant to this section shall be consistent with the mission of the department involved and with applicable departmental land-use plans.
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> (d) Lands and interests in lands acquired by the Secretary of Agriculture pursuant to this section shall, upon acceptance of title, become National Forest System lands subject to all the laws, rules, and regulations applicable thereto. [Emphasis supplied.]

See also H. Con. Rep. No. 94-1724 at 59, 94th Cong., 2d Sess., reprinted in 1976 U.S. Code Cong. & Adm. News 6231, 121 Cong. Rec. H 7596 (July 22, 1976). 2/

As our earlier recitation demonstrates, the SE 1/4 SE 1/4 sec. 1 was reconveyed to the United States in two separate and earlier forest exchanges. The N 1/2 N 1/2 S 1/2 SE 1/4 sec. 8 has never been transferred out of Federal ownership. We reach now the question presented by BLM in this case: whether restoration orders issued by BLM are required under the provisions of FLPMA to open the tracts acquired by the Secretary of Agriculture under the Forest Exchange Act to mineral leasing for oil and gas. Our answer is negative.

Close scrutiny of the legislative history and Congressional consideration of the antecedent bills (S. 507 and H.R. 13777, infra) offers scant guidance to our inquiry. Notably the Senate bill, S. 507, 3/ 94th Cong., 2d Sess., section 213 (1976), 122 Cong. Rec. H 7633 (1976), contained no reference to "applicable law." During general debate (Committee on Interior and Insular Affairs) of Title II of the House version of the Act, H.R. 13777, 94th Cong., 2d Sess., section 206(a) was amended by inserting the phrase "under applicable law,"

2/ Under the Act of March 20, 1922, lands acquired for national forests were regarded as having the status of public lands, and therefore subject to entry for mineral development. The Atchison, Topeka & Santa Fe R'wy. v. Cox, 4 IBLA 279 (1972), aff'd sub nom., Rawls v. United States, 566 F.2d 1373 (9th Cir. 1978). It follows that they are likewise open to mineral leasing.

3/ The Senate bill, S. 507, supra, was passed in lieu of the House bill, H.R. 13777, supra, after amending its language to contain much of the text of the House bill. 1976 U.S. Code Cong. & Adm. News 6175 (94th Cong., 2d Sess.).

supra, as it presently appears, supra. The proponent of the amendment intended thereby to:

> [E]liminate the applicability of Title II of the bill to lands within the National Forest System where other existing law now provide [sic] statutory criteria for the activities in question. For example, the Humphrey-Rarick Act [Forest and Rangeland Renewable Resources Planning Act of 1974, 88 Stat. 476, 16 U.S.C. § 1600 et seq. (1976)] now provides for resource inventories and land use planning. Also there is a substantial body of law now dealing with acquisition and exchange of lands by the Forest Service. * * * I would add that the amendment would remove from this bill provisions where the Department of Agriculture and the Forest Service are now governed by other applicable law.

122 Cong. Rec. H 7596 (July 22, 1976).

Based upon the discussion above quoted, the dearth of other commentary on the subject, and the subsequent retention of the amendment in section 206(a), we conclude that the Congress intended that prior applicable law not repealed by the Act should govern forest exchanges. See also FLPMA, section 310, 43 U.S.C. § 1740 (1976).

[4] Adverting to the provisions of "applicable law," supra, in the case of forest exchanges, lands acquired by the Secretary of Agriculture by exchange or some other form of acquisition upon acceptance of title become part of the National Forest System and are thereby subject to all the laws, rules and regulations applicable thereto. FLPMA, sections 205(d), 206(c), 43 U.S.C. §§ 1715(d), 1716(c) (1976); 16 U.S.C. § 485 (1976). National forest lands are by statute open to mineral leasing. 30 U.S.C. § 181 (1976); 40 Op. Atty. Gen. 260 (1943); 43 CFR 3101.1-1.

[5] With regard to cases involving reconveyances, under section 8, Taylor Grazing Act, 4/ 43 U.S.C. § 315g (1976), we observe that restoration orders are mandatory. BLM Manual 2091.8, 2097.

With two exceptions not here relevant, insofar as the policy and mandates of FLPMA shall govern public land administration, all Federally owned lands and interests therein are [Illegible Word] public lands without regard to the manner and source of acquisition. 5/ FLPMA, sections 103(e), 205(c), 43 U.S.C. §§ 1702(e), 1715(c) (1976). It is the practice of the Department that public lands reacquired by exchange and

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4/ Repealed by FLPMA, section 705(a), 90 Stat. 2793 (1976).

5/ We emphasize that this definition does not extend beyond the parameters stated. Traditional distinctions between, and usage of, the terms "public lands" and "acquired lands" under other applicable provisions of law are preserved intact. FLPMA, sections 102(b), 103, 43 U.S.C. §§ 1701(b), 1702 (1976).

administered by BLM are not available for entry, sale, location, or leasing until opened to such appropriation, and until such availability is duly noted on the public land records. BLM Manual, supra.

The regulation requiring notation of land records is 43 CFR 1813.1-1, and provides as follows:

> (a) Notations shall be made on the tract books and plats of all applications and entries of public lands, regardless of their character, in order that the status of a tract may be readily ascertained by the person examining either tract book or plat, and the authorized officer shall cause the proper notations to be made on the plats as well as on the tract books.
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> (b) All withdrawals, reservations, classifications, designations, and similar orders affecting the disposition of the land will be noted on the appropriate records.

Cases applying this principle are legion. In California and Oregon Land Co. v. Hulen and Hunicutt, 46 I.D. 55 (1917), the issue was the propriety of the allowance of two homestead entries in advance of the posted date and hour of restoration of patented lands canceled by court decree. Upon finding that the regulations then in effect had been fully satisfied, the Commissioner affirmed the decision on the theory that the lands involved had become subject to appropriation on the date of cancellation. The First Assistant Secretary reversed:

> The correct rule is that when a decree cancelling a land patent becomes finally effective, the patented lands are thereby restored to the public domain, but they are not thereby restored to appropriation until the local land officers are instructed by the Commissioner that the lands are restored to entry and have in accordance with instructions made notation of restoration upon the records of the local land office. [Citations omitted.]

46 I.D. 55 at 56.

In Earl Crecelouis Hall, 58 I.D. 557 (1943), the Assistant Secretary stated the following:

> Upon the Secretary's approval of the instrument [[Illegible Word]-road's release of odd section land grant] the two withdrawals * * * were in effect lifted and the lands, released from all claims, immediately regained the status of vacant, unappropriated, public lands. But this restoration of the tracts to the public domain did not eo instanti make them subject to classification and disposal. * * *

> The simple fact that lands belong to the United States and make [sic] part of the public domain does not of itself make them subject to disposal and private acquisition. Something more is required. * * * [T]he Supreme Court has also said that before lands federally owned become subject to private appropriation there must be an indication by the United States that the lands are held for such disposal. [Oklahoma v. Texas, 258 U.S. 574 at 600 (1921)]. * * *
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> Through the years, the Office and the Department have had frequent occasion to consider the status of restored lands -- lands once segregated by various kinds of adverse claims or appropriations, even those of patent, and restored to the United States by congressional act, by court decision, by individual relinquishment, by land office cancellation or by revocation of some withdrawal, Executive or departmental. In a long line of decisions in such cases, the Department has held that although restored lands become part of the public domain immediately, it remains for the Department and it alone in the absence of congressional direction to give the "indication" spoken of by the [C]ourt and to determine when and how such lands shall be opened for disposal.
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> Not only this. The Department has also held that orderly administration of the land laws forbids any departure from the salutary rule that lands which have once been segregated from the public domain, whether by entry, patent, reservation, selection or otherwise, shall not be subject to any form of appropriation until the local land officers * * * shall have entered upon the records of the local office proper notation of the restoration. [Citations omitted.]

58 I.D. 557 at 559-60. See Holt v. Murphy, 207 U.S. 407 (1908); Newhall v. Sanger, 92 U.S. 761 (1875). William J. Smith, 33 IBLA 47 at 51 (1977); United States v. John I. Maley, James F. Pagel, 29 IBLA 201 at 208 (1977); R. C. Buch, 75 I.D. 140 at 146-47 (1968); State of Utah, 53 I.D. 365 at 367 (1931); Martin Judge, 49 I.D. 171 at 172 (1922); Lewis G. Norton (On Rehearing), 48 L.D. 507 at 511 (1921); Gunderson v. No. Pac. Ry. Co., 37 L.D. 115 at 116 (1908); Charles H. Moore, 27 L.D. 481 at 493 (1898); Olson v. Traver, 26 L.D. 350 at 354-55 (1898); Smith v. Malone, 18 L.D. 482 at 483 (1894); Allen v. Price, 15 L.D. 424 at 426 (1892).

As our discussion above indicates, we have discerned nothing in the legislative history of FLPMA which arguably suggests congressional intent to abolish the Department's administrative practice of issuing restoration and opening orders. Moreover, we do not choose to assume that the Congress was unaware of this long practice or precedent applicable thereto. In our view, the mandates of the Act are best

served by adhering to the sound policy of fair and orderly administration of the public lands, until such time as the Secretary may promulgate a different or contrary rule.

Accordingly, we hold that a restoration order is not required as to the reconveyed SE 1/4 SE 1/4 sec. 1, T. 38 S., R. 7 W., acquired under the Forest Exchange Act. We further hold that acquired lands administered by BLM are not subject to appropriation unless and until opening orders are duly noted on the land records in the manner prescribed and set forth in the BLM Manual, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part, and set aside in part, and the case remanded for reconsideration in light of our decision.

Douglas E. Henriques
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge